

Michael J. Frevola
Lissa D. Schaupp
HOLLAND & KNIGHT LLP
195 Broadway
New York, NY 10007-3189
(212) 513-3200

ATTORNEYS FOR PLAINTIFF
FRONT CARRIERS LTD.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

FRONT CARRIERS LTD.,

Plaintiff,

-against-

TRANSFIELD ER CAPE LTD.,

Defendant.

07 Civ. 6333 (KMK)

**AFFIDAVIT OF MICHAEL J.
FREVOLO IN SUPPORT OF
PLAINTIFF'S OPPOSITION
TO DEFENDANT'S MOTION
BY ORDER TO SHOW
CAUSE TO VACATE
MARITIME ATTACHMENT**

STATE OF NEW YORK)
) ss:
COUNTY OF NEW YORK)

MICHAEL J. FREVOLO, being duly sworn, deposes and says:

1. I am a member of the law firm Holland & Knight LLP, attorneys for Plaintiff Front Carriers Ltd., and I am fully familiar with the facts in this case.

2. This Affidavit is made in support of Front Carriers' opposition to the application of Defendant Transfield ER Cape Ltd. by Order to Show cause to vacate this Court's Order of Attachment issued in this proceeding. The statements made in this affidavit are based upon my personal knowledge.

3. Transfield was aware of this proceeding no more than two days after Front Carriers had filed it on July 11, 2007. I know this because Patrick F. Lennon, Esq., counsel for Transfield, telephoned me on behalf of Transfield on Friday, July 13, 2007 to request copies of the papers filed by Front Carriers in this proceeding. I attach as Exhibit 1 a true copy of my e-mail to Mr. Lennon dated July 13, 2007 that enclosed the copies of the papers requested by Mr. Lennon in our earlier telephone conference.

4. On Monday, July 16, 2007, Mr. Lennon wrote me to request that I remind the garnishee banks that we were serving with process that the only party against which attachments should be made is Transfield ER Cape Ltd. (to avoid funds of other Transfield entities from being frozen). I sent out the requested reminder and copied Mr. Lennon, in response to which he replied on July 20, 2007 (emphasis added):

Mike,

This is fine and acceptable. Thanks.

As for moving forward, I am receiving information and instructions regarding the competing claims and will be reverting within the next few days with regard to a possible proposal on substitute security and likely with a demand for countersecurity.

Kind regards,

Patrick F. Lennon

I attach as Exhibit 2 a true copy of Mr. Lennon's e-mail to me dated July 20, 2007.

5. I forwarded Mr. Lennon's July 20 e-mail to my instructing Norwegian counsel, Nordisk Legal Services, to advise it of the status of this proceeding. Because Transfield's counsel had suggested that it would be proposing a security arrangement, both I and Norwegian counsel waited for that proposal before taking further action against Transfield. With regard to New York, Front Carriers could have instituted default proceedings against Transfield for its

failure to answer within 30 days of its property having been served and notice having been given, but it did not based on Mr. Lennon's correspondence. Similarly, Nordisk Legal Services instructed Front Carriers' Paris counsel, Gilles Gautier, Esq. of Ince & Co., to stand by on commencing arbitration in Paris awaiting Mr. Lennon's proposal.

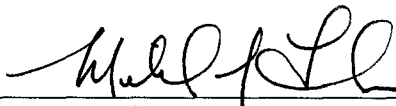
6. It therefore came as a great surprise to me when, rather than a security proposal to resolve this proceeding, Transfield obtained an Order to Show Cause last Friday afternoon to vacate Front Carriers' attachment without prior notice and with never having reverted as promised on the possible security proposal. It was even greater surprise that the grounds sought was for Front Carriers' "delay" in proceeding in Paris when the purported "delay" was based on Mr. Lennon's promise to revert with a possible security proposal.

7. With regard to the alleged delay in moving forward on the Paris arbitration, it is not unusual for plaintiffs to await obtaining full security (or an agreement on security) prior to commencing arbitration. Indeed, Mr. Lennon's firm recently acted in precisely the same fashion as plaintiff's counsel in a recent proceeding in which I was representing the defendant, which proceeding was pending before Judge Batts and entitled *Mamola Challenger Shipping Co., Ltd. v. Omak Maritime, Ltd.*, No. 07-cv-00996. I have attached as Exhibit 3 a copy of the docket sheet in that matter.

8. In *Mamola Challenger*, Mr. Lennon's firm filed its complaint seeking approximately \$14,000,000 on February 13, 2007. At the time that his firm filed the complaint, no arbitration had been commenced or demanded, although Mr. Lennon's firm claimed that a London arbitration clause governed. Mr. Lennon's firm subsequently attached approximately \$625,000 by February 22, 2007, but did not demand arbitration until April 2, 2007, or nearly two months after commencing its New York Rule B proceeding.

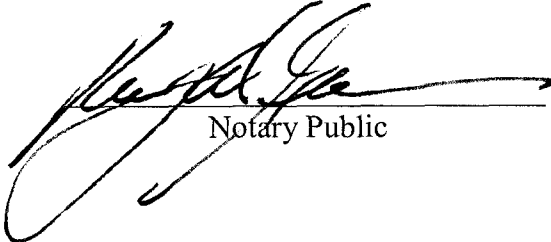
9. The point of the foregoing merely is to show that it is common practice in New York Rule B proceedings to demand arbitration only after security has been obtained and that a several week delay between commencing the Rule B proceeding and demanding arbitration is not unusual.

WHEREFORE, it is respectfully requested that this Court deny the Defendant Transfield's motion to vacate the Order of Attachment issued in this proceeding, and grant such other and further relief to the Plaintiff as may be appropriate.



Michael J. Frevola

Sworn to before me this
28th day of August, 2007



Notary Public

RUDY D. GREEN
Notary Public, State of New York
No. 02GR4952723
Qualified in Queens County
Certificate Filed in New York County
Commission Expires February 26, 2010

EXHIBIT 1

Frevola, Michael (NYC - X73516)

From: Frevola, Michael (NYC - X73516)
Sent: Friday, July 13, 2007 6:10 PM
To: 'Patrick F. Lennon'
Subject: Front Carriers Ltd. v. Transfield ER Cape Ltd., SDNY, 07 Civ. 6333 (KMK)
Attachments: 07-6333_ver_complaint_; 07-6333_exhibit_2_of_2_ver_complaint__Jul_12_2007_12_39_16_937.pdf; A578c268e-2764-436a-90e9-312470632adb.PDF

Dear Pat:

As requested, I attach the Verified Complaint and exhibits in the referenced matter.



07-6333_ver_compl07-6333_exhibit_2_
aint_ (2 MB) of_2_ver_comp...

Additionally, after we spoke today I was called by HSBC, who advised that they have attached \$1,054,712.57 in connection with the process issued in this proceeding. I attach a copy of the notice received for your reference.



A578c268e-2764-4
36a-90e9-31247...

As I understand your retention is not official but they have contacted you, in the interest of avoiding direct contact with your potential client I will ask you to pass along to Transfield the notice of the attachment received from HSBC in accordance with Local Rule B.2. If you do not wish to pass it on, please advise me accordingly and I will reach out to them directly.

I hope that you have an enjoyable weekend.

Best regards,
Mike Frevola

Holland + Knight

Michael J. Frevola, Esq.

Partner
Holland & Knight LLP
195 Broadway
New York, New York 10007

Main 212 513 3200
Direct 212 513 3516
Mobile 516 521 6365
Fax 212 385 9010
Email michael.frevola@hklaw.com

www.hklaw.com

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EXHIBIT 2

Frevola, Michael (NYC - X73516)

From: Patrick F. Lennon [pfl@lenmur.com]
Sent: Friday, July 20, 2007 12:13 PM
To: Frevola, Michael (NYC - X73516)
Subject: RE: Front Carriers v. Transfield ER Cape Ltd. 07-6333 PMAG - LML ref: 1172

Mike,

This is fine and acceptable. Thanks.

As for moving forward, I am receiving information and instructions regarding the competing claims and will be reverting within the next few days with regard to a possible proposal on substitute security and likely with a demand for countersecurity.

Kind regards,

Patrick F. Lennon
Lennon, Murphy & Lennon, LLC

The GrayBar Building
420 Lexington Ave, Suite 300
New York, NY 10170
(212) 490-6050
(212) 490-6070 fax

Tide Mill Landing
2425 Post Road
Southport, CT 06890
(203) 256-8600
(203) 256-8615 fax

www.lenmur.com

****NOTICE****

This message is being sent by a lawyer and may contain confidential information, attorney-client privileged information or attorney work-production information. If you have received this message in error, please notify the sender and delete the message. Thank you.

From: michael.frevola@hklaw.com [mailto:michael.frevola@hklaw.com]
Sent: Friday, July 20, 2007 12:08 PM
To: Patrick F. Lennon
Subject: FW: Front Carriers v. Transfield ER Cape Ltd. 07-6333 PMAG

Hi Pat:

Sorry for the delay in responding. The vessel visit screwed up my schedule for getting a Second Circuit brief done (due today) in the Williamson v. Recovery Limited Partnership case (big maritime jurisdiction and alter ego pleading issues in that one for Rule B).

attach below the notices that we commenced sending to the banks by fax and e-mail yesterday morning, which includes my letter of July 18 that addresses your request. We are sending these on a daily basis.

Best regards,
Mike Frevola

3/28/2007

Michael J. Frevola, Esq.

Holland & Knight LLP

From: Ramos, Elvin (NYC - X73590)

Sent: Wednesday, July 18, 2007 5:21 PM

To: 'aebpmag@zeklaw.com'; 'mary.b.mihalik@citigroup.com'; 'jennifer.paley@ubs.com'; 'maritime.attachments@wachovia.com'; 'reisert@navlaw.com'; 'johanna.vargas@us.standardchartered.com'; 'lynn.britt@us.fortis.com'; 'lauren.maier@us.fortis.com'; 'piechocki@mw-law.com'; 'john.bardakjy@sgcib.com'; 'joneill@cbkna.com'; 'acole@cbkna.com'; 'pmag@zeklaw.com'; 'pmag@americas.bnpparibas.com'; 'nmorton@btmna.com'; 'yroman@us.mufg.jp'; 'yholland@us.mufg.jp'; 'mildred.cuevas@leumiusa.com'; 'carlos.cabral@leumiusa.com'; 'errickf@bpop.com'; 'tdaniels@cbkna.com.'

Subject: Front Carriers v. Transfield ER Cape Ltd. 07-6333 PMAG

<<07_6333_writ__Jul_11_2007_16_53_23_697.pdf>> <<07_6333_order_att__Jul_11_2007_16_52_13_199.pdf>> <<07-6333 - Bank Letter July 18..pdf>>

Dear Ladies and Gentlemen:

Attached are copies of the following documents:

1. Writ of Attachment and Garnishment;
2. Order for Issuance of a Writ of Attachment and Garnishment;
3. Letter of Michale J. Frevola dated July 18, 2007 re funds;

It is our understanding that you will accept service of the above documents by email after the initial service. If you have any questions, please contact me at (212) 513-3590.

Best regards,

Elvin

EXHIBIT 3

CASREF, CLOSED, ECF

U.S. District Court
United States District Court for the Southern District of New York (Foley Square)
CIVIL DOCKET FOR CASE #: 1:07-cv-00996-DAB-HBP

Mamola Challenger Shipping Co., Ltd. v. Omak Maritime, Ltd.
Assigned to: Judge Deborah A. Batts
Referred to: Magistrate Judge Henry B. Pitman
Magistrate Judge Henry B. Pitman (Settlement)
Demand: \$9,999,000
Cause: 28:1333 Admiralty

Date Filed: 02/13/2007
Date Terminated: 08/01/2007
Jury Demand: None
Nature of Suit: 120 Contract: Marine
Jurisdiction: Federal Question

Plaintiff**Mamola Challenger Shipping Co., Ltd.**

represented by **Charles Edmund Murphy**
Lennon, Murphy & Lennon, LLC
The GrayBar Building
420 Lexington Avenue
Suite 300
New York, NY 10170
(212) 490-6050
Fax: (212) 490-6070
Email: cem@lenmur.com
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

V.

Defendant**Omak Maritime, Ltd.**

represented by **Michael J. Frevola**
Holland & Knight LLP
195 Broadway
New York, NY 10007
(212)-513-3516
Fax: (212)-385-9010
Email: michael.frevola@hklaw.com
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Date Filed	#	Docket Text
02/13/2007	<u>1</u>	COMPLAINT against Omak Maritime, Ltd. (Filing Fee \$ 350.00, Receipt Number 605550)Document filed by Mamola Challenger Shipping Co., Ltd.(tro) Additional attachment(s) added on 2/15/2007 (Becerra, Maribel). (Entered: 02/14/2007)
02/13/2007		SUMMONS ISSUED as to Omak Maritime, Ltd. (tro) (Entered: 02/14/2007)
02/13/2007		Magistrate Judge Henry B. Pitman is so designated. (tro) (Entered: 02/14/2007)
02/13/2007		Case Designated ECF. (tro) (Entered: 02/14/2007)
02/13/2007	<u>2</u>	RULE 7.1 CORPORATE DISCLOSURE STATEMENT. No Corporate Parent. Document

		filed by Mamola Challenger Shipping Co., Ltd.(tro) Additional attachment(s) added on 2/15/2007 (Becerra, Maribel). (Entered: 02/14/2007)
02/13/2007	<u>3</u>	ORDER directing the clerk to issue Maritime Attachment and Garnishment : process of maritime attachment and garnishment shall issue against all tangible or intangible property belonging to, claimed by or being held for the dft by any garnishees within this District in an amount up to and including \$14,286,809 as further set forth in this order. (Signed by Judge Deborah A. Batts on 2/13/07) (dle) (Entered: 02/14/2007)
02/13/2007	<u>5</u>	ORDER directing the clerk to issue Maritime Attachment and Garnishment against all tangible and intangible property belonging to, claimed by or being held by defendant(s) or any garnishees in the amount of \$14,286,809..... (Signed by Judge Deborah A. Batts on 2/13/07) (js) (Entered: 02/23/2007)
02/15/2007	<u>4</u>	AFFIDAVIT of Charles E. Murphy in Support. Document filed by Mamola Challenger Shipping Co., Ltd.. (Murphy, Charles) (Entered: 02/15/2007)
02/15/2007	<u>6</u>	MARITIME ATTACHMENT AND GARNISHMENT ISSUED as to Omak Maritime, Ltd. on 2/13/07 in the amount of \$14,286,809. (cd) (Entered: 03/05/2007)
04/03/2007	<u>7</u>	RULE 7.1 CORPORATE DISCLOSURE STATEMENT. Identifying Eidesvik AS and Eidesvik Offshore ASA as Corporate Parent. Document filed by Omak Maritime, Ltd.. (Frevola, Michael) Modified on 4/5/2007 (lb). (Entered: 04/03/2007)
04/03/2007	<u>8</u>	ANSWER to Complaint. Document filed by Omak Maritime, Ltd..(Frevola, Michael) (Entered: 04/03/2007)
05/29/2007	<u>9</u>	NOTICE OF CHANGE OF ADDRESS by Charles Edmund Murphy on behalf of Mamola Challenger Shipping Co., Ltd.. New Address: Lennon, Murphy & Lennon, The GrayBar Building, 720 Lexington Ave., Suite 300, New York, NY, 10170, 212-490-6050. (Murphy, Charles) (Entered: 05/29/2007)
06/05/2007	<u>10</u>	ORDER TO SHOW CAUSE filed by Omak Maritime, Ltd. Why an Order should not be issued pursuant to Supplemental Rule E of the Supplemental Rules for Certain Admiralty and Maritime Claims of the FRCP: (1) Vacating the attachment of all of Omak's assets; or in the alternative, (2) Reducing the amount of plaintiff's attachment in an amount to be determined by the Court; and (3) Awarding defendant Omak other relief. Plaintiff is to show cause before this Court, at room 24B, 500 Pearl Street on a date to be determined by the District Court. A breifing schedule shall be as the parties agree between themselves. (Signed by Judge Deborah A. Batts on 6/5/07) (db) (Entered: 06/06/2007)
06/06/2007	<u>11</u>	AFFIDAVIT of Michael J. Frevola in Support of O/S/C to Vacate or Reduce the Amount of Maritime Attachment in Support re: <u>10</u> Order to Show Cause,,. Document filed by Omak Maritime, Ltd.. (Frevola, Michael) (Entered: 06/06/2007)
06/06/2007	<u>12</u>	AFFIRMATION of John M.B. Harington in Support re: <u>10</u> Order to Show Cause,,. Document filed by Omak Maritime, Ltd.. (Frevola, Michael) (Entered: 06/06/2007)
06/06/2007	<u>13</u>	AFFIRMATION of Lars Alvestad in Support re: <u>10</u> Order to Show Cause,,. Document filed by Omak Maritime, Ltd.. (Frevola, Michael) (Entered: 06/06/2007)
06/06/2007	<u>14</u>	MEMORANDUM OF LAW re: <u>10</u> Order to Show Cause,,. Document filed by Omak Maritime, Ltd.. (Frevola, Michael) (Entered: 06/06/2007)
06/06/2007	<u>15</u>	FIRST MEMORANDUM OF LAW in Opposition re: <u>10</u> Order to Show Cause,,. Document filed by Mamola Challenger Shipping Co., Ltd.. (Murphy, Charles) (Entered: 06/06/2007)

06/06/2007	<u>16</u>	DECLARATION of Grandiere in Opposition re: <u>10</u> Order to Show Cause,,. Document filed by Mamola Challenger Shipping Co., Ltd.. (Murphy, Charles) (Entered: 06/06/2007)
06/06/2007	<u>17</u>	DECLARATION of Hawkes in Opposition re: <u>10</u> Order to Show Cause,,. Document filed by Mamola Challenger Shipping Co., Ltd.. (Murphy, Charles) (Entered: 06/06/2007)
06/06/2007	<u>18</u>	DECLARATION of Utz in Opposition re: <u>10</u> Order to Show Cause,,. Document filed by Mamola Challenger Shipping Co., Ltd.. (Murphy, Charles) (Entered: 06/06/2007)
06/06/2007	<u>19</u>	DECLARATION of Lachevre in Opposition re: <u>10</u> Order to Show Cause,,. Document filed by Mamola Challenger Shipping Co., Ltd.. (Attachments: # <u>1</u> Exhibit 1# <u>2</u> Exhibit 2# <u>3</u> Exhibit 3# <u>4</u> Exhibit 4)(Murphy, Charles) (Entered: 06/06/2007)
06/08/2007	<u>20</u>	AFFIRMATION of Christopher R. Nolan in Support re: <u>10</u> Order to Show Cause,,. Document filed by Omak Maritime, Ltd.. (Frevola, Michael) (Entered: 06/08/2007)
06/08/2007	<u>21</u>	REPLY MEMORANDUM OF LAW in Support re: <u>10</u> Order to Show Cause,,. Document filed by Omak Maritime, Ltd.. (Frevola, Michael) (Entered: 06/08/2007)
06/11/2007	<u>22</u>	ORDER REFERRING CASE TO MAGISTRATE JUDGE. Order that case be referred to the Clerk of Court for assignment to a Magistrate Judge for specific non-dispositive motion/dispute: parties to exchange information/discovery relating to motion to vacate attachment; if referral is for discovery disputes when the District Judge is unavailable, the time period of the referral is 6/4/07-6/15/07 and for settlement. Referred to Magistrate Judge Henry B. Pitman. (Signed by Judge Deborah A. Batts on 6/4/07) (dle) (Entered: 06/14/2007)
08/01/2007	<u>23</u>	STIPULATION AND ORDER OF DISMISSAL: the process of maritime attachment issued purs. to this court's order dated 2/13/07 is hereby vacated; that all garnishees named in the process of maritime attachment are directed purs. to the release any of dft's funds currently under attachment purs. to the instructions of its counsel, Holland & Knight; this action is dismissed without prejudice and without costs. (Signed by Judge Deborah A. Batts on 8/1/07) (dle) (Entered: 08/02/2007)

PACER Service Center			
Transaction Receipt			
08/28/2007 09:22:10			
PACER Login:	hg0002	Client Code:	500177-03214/mf
Description:	Docket Report	Search Criteria:	1:07-cv-00996-DAB-HBP
Billable Pages:	3	Cost:	0.24

ATTORNEY'S AFFIRMATION OF SERVICE

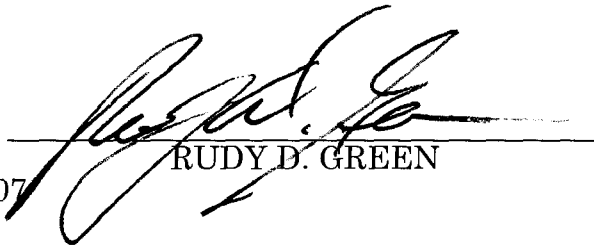
STATE OF NEW YORK)
) SS.:
COUNTY OF NEW YORK)

RUDY D. GREEN, an attorney admitted to practice in the Courts of the State of New York, affirms under penalty of perjury:

That on August 28, 2007, I served a true copy of the attached Affidavit, via email to the following:

Patrick F. Lennon, Esq.
Lennon, Murphy & Lennon LLC
pfl@lenmur.com

Dated: August 28, 2007


RUDY D. GREEN